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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,485

10/27/2003

Carlos Juan Negrón

1924

7590

08/14/2006

Carlos J. Negrón  
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Orlando, FL 32809

EXAMINER

PASCUA, JES F

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/692,485	Applicant(s) NEGRON, CARLOS JUAN	
	Examiner Jes F. Pascua	Art Unit 3727	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claims) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claims must be in one sentence form only. Note the format of the claims in the patents previously cited.

In claim 1, line 1, "The flexibility of the elastic material" has not been previously set forth in the language of the claim.

In claim 1, line 1, "the elastic material" has not been previously set forth in the language of the claim. The claim should initially recite *an* elastic material before reciting *the* elastic material.

In claim 1, line 1, a manufacturing process has not been previously set forth to warrant the language "the manufacture".

In claim 1, line 2, a "Fit N' Bag liner" has not been previously set forth to warrant the language "the 'Fit N' Bag' liner".

In claim 1, lines 2-3, "the descent/ascent feature" has not been previously set forth in the language of the claim.

Claim 2 is indefinite because it does not define any structural features of applicant's invention.

In claim 3, the functional recitation that the "Fit N' Bag liner will take the shape of any receptacle" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

In claim 3, the recitation that the "Fit N' Bag liner will take the shape of any receptacle" is indefinite. Since receptacles come in many different shapes, it cannot be determined, with any degree of certainty or precision, the particular limits of the shape recited in the claim so as to ascertain the metes and bounds of the claim.

In claim 3, a "Fit N' Bag liner" has not been previously set forth to warrant the language "the 'Fit N' Bag' liner".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,082,171 to Homel et al.

The Homel et al. patent discloses collapsible bag having cords of elastic material in its corners that permit the bottom of the bag to lower as it is loaded. As the bag is unloaded, the cords of elastic material automatically raise the contents that are further down within the bag into reach. See column 5, lines 5-13 of the Homel et al. patent. Having shown that the bag in the Homel et al. patent performs applicant's claimed "descent/ascent feature", the benefit of minimized back bending on users is inherently achieved. Furthermore, the Homel et al. patent discloses that the collapsible bag may be rectangular, polygonal or cylindrical (see column 7, lines 29-32), thus meeting the recitation "The 'Fit N' Bag' liner will take the shape of any receptacle as it is form fitting."

#### ***Response to Arguments***

5. Applicant's arguments filed 06/08/2006 have been fully considered but they are not persuasive.

Regarding applicant's argument that the Homel et al. bag does not provide the same descent/ascent feature, a claim is anticipated if each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice. The structure recited in applicant's claims is found in the Homel et al. patent, thus anticipating applicant's claims.

Applicant remarks that the bag of the Homel et al. patent is not constructed in the same or like manner as applicant's invention. However, applicant has not pointed out what particular, structural features are recited in the claims that is not found in the Homel et al. patent.

In response to applicant's argument that "a supported collapsible bag serving as a book return, does not address the many possible uses of the 'Fir N' Bag' receptacle liner", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### ***Conclusion***

6. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee of \$250.00.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims

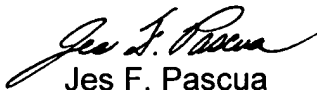
or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP